

Appl. No. 09/712,935
Amdt. dated June 8, 2004
Reply to Office Action of May 3, 2004

REMARKS

Prior to this Amendment, claims 1-23 were pending. Independent claims 1, 9, 12, and 15 are amended to clarify that winners of a proxy-based auction are determined based on a combination of a limit price and a quantity of goods being auctioned relative to quantities being requested by bidders. This process of determining winners is not shown by the art of record. Further, these claims are amended to clarify that the winning sale price or price to be paid by the winners is generated AFTER the winners are selected, which is distinct from the auction methods of the art of record. All the identified winning bidders pay this winning price.

Dependent claims 3, 11, and 14 are amended to clarify that the winning sale price is determined by identifying the losing proxy bid with the highest limit price and incrementing this limit price. Such a technique of assigning a sale price is not shown in the art of record. Dependent claim 6 is amended to clarify that the method comprises generating a second winning price when a winning bidder declines a partial filling of their requested quantity by allocating a portion of the goods to a highest losing proxy bid. The second winning price differs from the winning sale price in that it equals the limit price rather than being incremented by an increment amount. Hence, two prices are paid in this embodiment, and this process is not shown in the art of record.

Claims 2, 10, 13, and 16-19 are canceled. No new matter is added by these amendments with support found in the original claims and Applicants' Figures 2-4 and supporting portions of the specification. Claims 1, 3-9, 11, 12, 14, 15, and 20-23 remain for consideration by the Examiner.

The claim amendments are only being used to place the claims in condition for allowance or for use on Appeal and do not raise new issues that would require a new search. Hence, Applicants respectfully request that the amendments be entered and fully considered by the Examiner.

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Rejection of Claims Under § 103(a)

In the Office Action, claims 1-23 were rejected under 103(a) as being unpatentable over U.S. Patent No. 5,835,896 ("Fisher") in view of Official Notice. This rejection is respectfully traversed based on the following remarks.

Independent claim 1 is directed to a method for conducting an on-line auction of a quantity of goods. The method comprises receiving a plurality of proxy bids with a limit price and a requested quantity. The proxy bids are sorted based on the limit prices. Winner determination is performed comprising assigning a winning bidder designation to a highest one of the proxy bids, allocating the corresponding requested quantity to the winning bidder, and when goods remain, assigning a next winning bidder designation and repeating the goods allocating. **After all winners are identified**, the method continues with generating a winning sale price. Hence, the sale price is not established until the winning bidders are known, which is, of course, after all the proxy bids are received. In other words, the method of claim 1 allows an auction to be held without ongoing incrementing of a high bid and the processing associated with such incrementing and with notification of changing high bids. Fisher fails to teach such a procedure, and in contrast to statements in the Office Action, Fisher would not produce a similar result. As a result, the rejection of claim 1 based on Fisher is not supported and should be withdrawn.

More particularly, the Office Action cites Fisher at cols, 6, 7, 10 and 13 for teaching determining a winner of an on-line auction and at col. 10, lines 29-39 for teaching generating a winning sale price. In col. 10, Fisher is describing a Dutch Auction format with reference to Figure 10. In Figure 10, Fisher teaches a technique teaches an ongoing auction format in which bids are sorted, a highest value bid is selected as "successful," and at that time, a "MINWIN" price is assigned. The "MINWIN" price is "the price above which a new bidder must bid in order to be successful ... were the auction to close at that moment" (see, col. 10, lines 54-57). The Fisher auction is allowed to continue with the MINWIN price altering (i.e., rising) and the number and identify of winners changing. In contrast, the method of claim 1 calls for the

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proxy bids to be received, for the bids to be sorted, for winners to be determined based on their requested quantity and the quantity of goods being auctioned, and only after the winners are identified, the sales price is generated. The process of claim 1 is not taught by Fisher, and in particular, the timing of when the winning price is set is not shown or suggested. Further, the results of the auction often may vary between the auction of claim 1 and the Fisher auction shown in Figure 10. Hence, claim 1 is in condition for allowance.

Claim 3 depends from claim 1 and is believed allowable as depending from an allowable base claim. Additionally, claim 3 calls for the winning sales price to comprise determining a highest losing proxy bid from the descending order, determining the limit price of such a losing proxy bid, and then incrementing the limit price of the losing proxy bid to generate the winning price to assign to the winning bidders. This results in a single price that is paid to by all winning bidders regardless of their limit price, and the single sale price is not equal to any information provided in their proxy bids. Such a method of setting a winning sale price is not shown or suggested by any of the methods discussed in Fisher.

Several of the Fisher methods, such as the method of col. 9, lines 18-35 and the proxy bidding discusses at col. 12, beginning at line 63, teaches receiving new bids and increasing the highest bid (or winning sales price) on an ongoing basis. Bidders are sent e-mail notifications of the current winning sales price and encouraged to send in a new bid, which is used to increase or increment the winning sales price. This practice is continued until the auction is closed and the last winning sales price is used to set the price to be paid. These methods do not produce an identical result as the method of claim 3 as suggested by the Office Action on page 3. Hence, it would not have been obvious to modify Fisher to achieve Applicants' claimed auction method. Applicants' method calls for determining a winning sales price once, and only after all proxy bids are received, sorted, and the winners are determined based on quantities of goods sold and requested by the bidders.

Claims 4-8 depend from claim 1 and are believed allowable as depending from an allowable base claim. Additionally, claim 6 calls for an

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additional portion of the goods to be allocated to a highest losing proxy bid. A second winning sale price is set equal to the highest losing proxy bid's limit price. As a result, two sale prices are used within a single auction. Fisher teaches providing favored pricing to larger lot bidders but fails to teach that when a winning bidder declines a partial filling of their order that a losing bidder is provided a portion of the goods and at a lower price than the winning bidders. Applicants disagree with the Office Action's statement that it would have been an obvious step to modify Fisher to achieve Applicants' invention because Fisher teaches away from the method of claim 6 and never even suggests that lower bidders would receive a portion of the goods.

Official Notice was taken in the first Office Action regarding claim 6 that it was known for merchants to dispose of goods at various prices submitted by potential buyers. Applicants did not traverse this taking of Official Notice in the next response because claim 6 is believed allowable as depending from an allowable base claims. Additionally, Applicants believe that the Official Notice taken "at various prices" was too general and based on mere conjecture and hence, cannot provide adequate support for a rejection of the detailed limitations of claim 6. As noted, the only support for rejecting claim 6 actually teaches away from providing a preferential price to a lower bidder, and so, the combination of Official Notice and Fisher fails to produce the method of claim 6. Hence, claim 6 is allowable for this additional reason.

Independent claims 9, 12, and 15 contain limitations similar to claim 1 in differing form, and the arguments for allowing claim 1 are applicable to claims 9, 12, and 15. Claims 11, 14, and 20-23 depend from claims 9 and 12 and are allowable as depending from an allowable base claim. Further, dependent claims 11 and 14 include limitations similar to that of claim 3 and the reasons for allowing claim 3 apply equally to claims 11 and 14.

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Conclusion

In view of all of the above, the pending claims are believed to be allowable and the case in condition for allowance, which action is respectfully requested. Should the Examiner be of the opinion that a telephone conference would expedite the prosecution of this case, the Examiner is requested to contact the attorney at the telephone number listed below.

No fees are believed to be required with the Response but should any be required, please charge them to Deposit Account 50-1123.

Respectfully submitted,

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